

DECISION

Wingfield
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-217301**DATE:** June 4, 1985**MATTER OF:** Richard M. Morse - Reimbursement of
Real Estate Expenses - IPA Assignment**DIGEST:**

An employee sold his residence in Washington, D. C., prior to reporting to Olympia, Washington, for an Intergovernmental Personnel Act (IPA) assignment and bought a house in Seattle, Washington, one year into his two-year IPA assignment. He may not be reimbursed for real estate transaction expenses incident to his transfer to Seattle at the completion of that assignment. The employee incurred the expenses prior to the issuance of travel orders and there is no evidence of a clear administrative intention to transfer him at the time he incurred those expenses.

This decision is in response to a request from the National Oceanic and Atmospheric Administration (NOAA) concerning the entitlement of one of its employees to reimbursement of real estate expenses. We conclude that the employee, Mr. Richard M. Morse, is not entitled to reimbursement.

BACKGROUND

In September 1980 Mr. Morse accepted a two-year Intergovernmental Personnel Act (IPA) assignment to the Washington State Department of Natural Resources in Olympia, and he reported for duty there in October 1980. Settlement on the sale of his residence in Washington, D.C., took place before he left for Olympia, on September 19, 1980. Although the actual orders are not in the record before us, NOAA states that, in lieu of per diem, Mr. Morse was authorized reimbursement for his travel expenses, his wife's travel expenses, and the transportation of his household goods in connection with his IPA assignment. On August 16, 1981, Mr. Morse settled on the purchase of a house on Bainbridge Island, Washington (near Seattle), but he remained in

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Olympia while he began a one-year remodeling project. Mr. Morse's IPA assignment terminated on September 30, 1982, and he accepted a transfer to NOAA's National Ocean Service in Seattle, effective October 3, 1982.

On January 17, 1983, Mr. Morse sent a memorandum to the Director of NOAA's Office of Administrative and Technical Services in which he stated that, since he had accepted a reassignment to Seattle, a permanent change of station had occurred and he was now eligible for the entitlements associated with a transfer. He asked whether he should apply for entitlements based on the circumstances of his 1980 relocation from Washington, D.C., or based upon the circumstances of his 1982 relocation from Olympia, Washington. In addition, he requested that he be provided with permanent change of station orders and a service agreement.

On May 20, 1983, a travel order was signed by the Chief Scientist, National Ocean Service, NOAA, which provided for travel from Olympia to Seattle, Washington, and authorized reimbursement for travel, per diem and transportation of household goods. This travel order contains the statement that it cancelled and superseded an earlier travel order directing Mr. Morse to return to Washington, D.C., upon the completion of his IPA assignment.

Subsequent to the issuance of the travel order Mr. Morse submitted two claims, one for travel expenses for himself and his wife and transportation of their household goods, and one for reimbursement of real estate expenses. The former claim was paid. On August 17, 1983, Mr. Morse wrote to NOAA's Office of Administrative and Technical Services, requesting reimbursement of the latter claim. In response to his request, on July 27, 1984, the Director of that office denied his claim for the following reasons:

"1. On October 5, 1980, when you entered into the 2-year IPA assignment, travel orders were processed to authorize relocation in lieu of reduced per diem for you, your family, and your household goods from Washington, D.C. to Olympia, Washington. Because the relocation was incident to an IPA assignment, your official duty station remained Washington, D.C., and you therefore were not entitled to all reimbursements usually associated with a permanent change of station.

"2. Although you were not entitled to real estate reimbursement, you sold your home in the Washington, D.C. area and bought a home in Olympia, Washington. Due to the fact the IPA assignments do not allow expenses for real estate transactions, you cannot be reimbursed for either of these expenses.

"3. During your assignment in Olympia, you moved to Seattle in the absence of official travel orders, thus requiring you to commute daily from Seattle to the University (90 miles one way) rather than from Olympia to the University (5 miles one way). Reimbursement for relocations, prior to receiving official Permanent Change of Station Travel Orders, is not authorized. Also, Olympia was never your official duty station, thus a permanent change of station from Olympia cannot be authorized.

"4. You did not exercise your right to return to the Washington, D.C. area (official duty station) at the end of your IPA assignment, but instead then accepted a reassignment with the National Ocean Services in Seattle, effective October 3, 1982. You had on your own initiative moved your family to the Seattle area in August 1981, thus forfeiting all reimbursement rights from Washington, D.C. to Seattle."

The Director concluded by stating that, since the circumstances indicated that Mr. Morse incurred his real estate expenses prior to any expression of intention by the government to transfer him, he could not be reimbursed, citing William S. Harris, B-183283, August 5, 1975.

In his appeal to this Office, Mr. Morse contends that the agency's intention to transfer him was expressed in conversations he had with his supervisor prior to the beginning of his IPA assignment and that the IPA assignment was to be the first step in a series of personnel actions that would result in an assignment to Seattle. In support of that contention Mr. Morse has submitted a statement from a Thomas D. Potter, who was the Director of the Environmental Data and Information Service at the time of those conversations, but who subsequently left the agency. Mr. Potter's statement, dated September 27, 1984, is repeated, in full, as follows:

"When, in mid-1980, an opportunity came to Dick Morse, my Associate Director for Marine Sciences, to accept a two-year Intergovernmental Personnel Act appointment with the State of Washington, I supported that appointment and assisted in obtaining the necessary appointment authority from the office of the NOAA Administrator. I was aware that Dick's permanent home and extended family were in the Seattle area, and that he hoped to obtain Federal employment there for the final years of his civil service.

"For my part, I had a number of plans for the restructuring of NOAA's Environmental Data and Information Service, which I directed. None of these plans provided for continuation of an Associate Director's position. As such, the IPA assignment was timely, and I further agreed to assist (if necessary) in finding a permanent position for Mr. Morse in the Seattle area.

"It was expected that the principal burden of locating a new position in Seattle would be Mr. Morse's. There were at least two plans under consideration by the NOAA Administrator for the expansion of NOAA's marine services at the NOAA Western Regional Center, Seattle. Each of these envisioned expansion of EDIS data and information services. Should nothing else develop for Mr. Morse, it was reasonable to expect that in two years we could find some sort of position for him within this area. It was made clear to him, however, that this would be a 'last resort' to allow him to remain in the Seattle area rather than return to Washington, D.C. and that it was very unlikely that any Seattle position would be at his (then) Senior Executive Service level.

"In anticipation of the development of some mutually satisfactory arrangement, I abolished the Associate Director position within EDIS

shortly after Mrs. Morse's departure on the IPA, and released his SES ceiling point to the general NOAA pool.

"Although I departed from NOAA in March 1982 with the question of Mr. Morse's reassignment still unresolved, I was aware that the Administrator of NOAA had approved a plan for expanding NOAA's Ocean Services in Seattle, and I was comfortable that a suitable opportunity for Mr. Morse would arise. I was aware further that a major restructuring of NOAA to emphasize ocean services had been proposed by the Administrator, and this would generally support opportunities for persons with Mr. Morse's background.

"I understand, subsequently, that there were delays in the establishment of the ocean services expansion and in the restructuring of NOAA, although both did, in fact, take place in 1983. I understand further that another NOAA opportunity did arise which provided a position in Seattle for Mr. Morse, so that everything worked out pretty much the way we had thought it would when this matter of reassignment was first considered."

Mr. Morse also contests other statements in NOAA's denial of his claim. He points out that, contrary to NOAA's statement in point 3 of their denial, he did not move to Seattle prior to the completion of his IPA assignment, but remained in Olympia until his IPA assignment was complete and he had telephone transfer orders. He admits that he purchased a house in Seattle in 1981 and states that his wife moved into the house in July 1982, but claims that he commuted on the weekends rather than on a daily basis as NOAA contends. He points out that while NOAA states that he was commuting to a University, Olympia has no University and, in any event, he was assigned to the Washington State Department of Natural Resources.

In point 4 of its denial NOAA states that since Mr. Morse moved his family to the Seattle area in August 1981 (Mr. Morse says July 1981) on his own initiative,

he forfeited all reimbursement rights from Washington, D.C., to Seattle when he accepted a reassignment in Seattle rather than exercising his right to return to Washington. Mr. Morse also asks whether this statement means that he would be entitled to such reimbursement if he had returned to Washington, D.C., and then proceeded to Seattle.

Mr. Morse contends that the order issued on May 20, 1983, deleted funds authorized for real estate reimbursement in the earlier order, even though \$8,000 had been approved in the Project's Financial Operating Plan for Fiscal Year 1984 to specifically cover that expenditure.

And finally, Mr. Morse argues that his situation should not be governed by the Comptroller General decision cited by NOAA, but rather by Comptroller General decision B-191912, April 5, 1979. There, we held that an employee could be reimbursed for expenses he incurred prior to the issuance of formal travel orders, even though he was advised that his transfer was subject to higher level approval, since administrative intent to transfer the employee had been demonstrated.

OPINION

A federal employee who is detailed to a state or local government under the Intergovernmental Personnel Act (5 U.S.C. §§ 3371-3376) is entitled to receive reimbursement either for (1) travel expenses and per diem or (2) expenses for the transportation of the employee's immediate family and household goods, per diem for the immediate family while traveling to and from the location of the assignment, temporary quarters subsistence expenses, miscellaneous expenses where movement or storage of household goods is involved, and expenses of nontemporary storage of household goods if assigned to an isolated location. 5 U.S.C. § 3375(a).

In either case, an IPA assignment is not a permanent change of station and the assignment site is considered a temporary duty station. In that connection, we have held that even where an agency intends to assign an employee to a new location at the termination of an IPA assignment, the IPA duty remains a temporary duty assignment. Philip A. Jarmack, B-206258, June 16, 1982. But in that case and in

the case NOAA cites, William B. Harris, B-183283, August 5, 1975, reconsideration denied October 15, 1976, we held that employees who were assigned to a new permanent duty station upon termination of their IPA assignments were entitled to the allowances they would have received incident to a transfer from their old duty station to their new duty station.

In order to receive such reimbursement, however, these employees must still meet the prerequisites for reimbursement of such expenses set forth in the applicable laws, regulations, and Comptroller General decisions. In Harris, we held that the employee could not be reimbursed for house sale expenses because the house he sold was located at his temporary IPA assignment site rather than at his old permanent duty station. Therefore, the sale did not satisfy the requirements of 5 U.S.C. § 5724a(a)(4). Similarly, Mr. Morse may not be reimbursed for house sale and purchase expenses because they were incurred prior to the issuance of any travel orders, and prior to any clear administrative intention to transfer Mr. Morse.

An employee should not incur expenses for relocation until after he has received transfer orders. 54 Comp. Gen. 993 (1975). However, we have held that an employee may be reimbursed for moving and relocation expenses incurred prior to and in anticipation of a transfer of official duty station if "the travel order subsequently issued to the employee included authorization for the expenses on the basis of a previously existing administrative intention, clearly evident at the time the expenses were incurred by the employee, to transfer the employee's headquarters." 48 Comp. Gen. 395, 396 (1968). What constitutes a clear intention to transfer an employee depends on the circumstances in each case. 53 Comp. Gen. 836, 837 (1974). See also Joan C. Marci, B-188301, August 16, 1977. The case Mr. Morse cites in support of his claim falls within this category of exception. James H. Hogan, B-191912, April 5, 1979.

We do not find clear evidence of administrative intent to transfer Mr. Morse at the time of settlement on the sale of his old residence or at the time of settlement on the purchase of his new residence. The principal evidence which Mr. Morse submitted to support his allegations that such intention existed is a statement from

his supervisor, Thomas D. Potter. Rather than evidencing the agency's intention to transfer Mr. Morse, it instead shows that Mr. Potter recognized Mr. Morse's desire to return to the West Coast and his intention of seeking employment in Seattle. Mr. Potter's statement makes it clear that, at most, he agreed to assist Mr. Morse in his search for a position, if necessary. The burden of locating a new position in Seattle would be on Mr. Morse. Finally, Mr. Potter states that in March 1982, when he departed from NOAA, the question of Mr. Morse's reassignment was still unresolved, thus showing that there was no clear intention to transfer Mr. Morse.

Moreover, Mr. Morse makes it clear, in his January 7, 1983, memorandum that he knew his IPA move was not a permanent change of station. In that memorandum he states:

"* * * Since it was anticipated that I would return, my permanent duty station remained Washington, D.C. and my relocation was NOT considered a transfer (PCS). Thus, I was not eligible for several of the [NOAA Travel Handbook] entitlements associated with PCS."

He goes on to say:

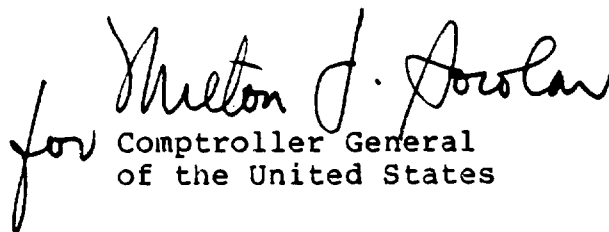
"When my Olympia tour was nearly completed and my return to Washington D.C. was imminent, I checked with MB/PER relative to options available to me. There were personal considerations relating to the possibility of my returning to Washington D.C. but without my family, which would be relocated in the Seattle area. I was advised that I could relocate my family/household goods at government expense, to any location a lesser distance than Washington, D.C. and that I could do it at my own expense subject to reimbursement, but not to exceed the GSA commuted rate. However, I was reminded that since my permanent station had remained Washington, D.C. all this time, I would again be ineligible for certain PCS benefits."

The facts of Mr. Morse's situation are similar to those in Alan L. Olson, B-206239, April 26, 1982. The employee in that case, who was employed by the National Weather Service in Huntsville, Alabama, sought a transfer to the West Coast in order to be closer to members of his family. He contacted the Western Region Headquarters of the National Weather Service by telephone and was advised that, based on his experience and other factors, it was likely he would be selected for a position in the Western Region within 6 months to 1 year. Based on that assurance he placed his house on the market and sold it quickly. Shortly after settlement he applied for a position under a vacancy announcement and was selected and issued travel orders. In our decision we denied his claim on the basis that he sold his residence before he had sufficient reason to believe he would be transferred.

In light of the preceding discussion we do not find it necessary to discuss the more specific objections Mr. Morse has raised concerning NOAA's denial of his claim in great detail. However, with regard to his first objection, the date of Mr. Morse's actual move to Seattle or his commuting practices do not affect his entitlement since he bought the house in Seattle in 1981, well before his transfer.

Mr. Morse also asked whether he would have been reimbursed had he returned to Washington prior to proceeding to Seattle. Again, because Mr. Morse incurred real estate expenses prior to any definite indication that NOAA would transfer him, his return to Washington would not have affected his entitlements. Finally, although Mr. Morse contends that funds for his relocation expenses had been specifically allocated there is a memorandum in the file from Mr. Samuel Lawrence, in which he states that the budget for the project did not contain any specific allocation for such expenses.

Accordingly, Mr. Morse's claim for reimbursement of residence transactions expenses is denied.


for Comptroller General
of the United States